IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No.75 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RELIANCE PETROLEUM LTD.

Versus

.

Appearance:

1. COMPANY PETITION No. 75 of 2002

MR JJ BHATT, SR. ADVOCATE, MR.MIHIR J. THAKORE, SR ADVOCATE, MR.DARASHAN MAHESH PARIKH, ADVOCATE INSTRUCTED BY MR. CYRIL SHROFF, MR.SHARAD MATHKAR, MR. JAYESH ODEDARA, MR. ARJUN LALL OF M/S.AMARCHAND MANGALDAS SURESH A. SHROFF & CO. for the Petitioner.

MR SAURABH N. SOPARKAR, SR. ADVOCATE WITH MR SUNIT S SHAH, MR SS BELSARE AND MS SONAL R SHAH for FOR OBJECTORS

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 13/09/2002

CAV JUDGEMENT

1. This is a petition, filed by Reliance Petroleum Limited (hereinafter referred to as "RPL" or the "transferor Company" or the "petitioner - Company"). The object of this petition is to obtain sanction of this Court to the arrangement embodied in the Scheme of Amalgamation (hereinafter referred to as the "Scheme") of RPL with Reliance Industries Limited (hereinafter referred to as "RIL" or the "transferee Company").

2. RPL was originally incorporated on 03.09.1991 as "Reliance Refineries Private Limited" with its Registered Office in the State of Maharashtra. On 27.01.1993, the said Company shifted its Registered Office to the State of Gujarat, and on 07.04.1993, the name of the said Company was changed to "Reliance Refineries Limited", and thereafter to "Reliance Petroleum Limited" on 16.04.1993.

3. The Registered Office of Reliance Petroleum Limited, the transferor Company, is at Village Motikhavdi, P.O.Digvijay Gram, Dist.Jamnagar, (Gujarat) 361 140.

4. As per certified copy of the last audited Balance Sheet of RPL as on 31st March, 2001, the authorized share capital of the petitioner Company is Rs.7000,00,00,000/= divided into 600,00,00,000 equity shares of Rs.10/= each, 30,00,00,000 preference shares of Rs.10/- each and 70,00,00,000 unclassified shares of Rs.10/= each. The issued capital is Rs.5,203,04,71,000/= divided into 520,30,47,100 equity shares of Rs.10/= each. The subscribed capital is Rs.520,16,66,900/= and the calls in arrears on the equity shares amount to approximately Rs.2,41,00,000/=.

5. The main objects of RPL are to carry on the business of extraction of oil by different means from various kinds of commodities as specified in para 4 of the petition and to carry on all or any of the following business viz. Refining of Petroleum Crude Oil, manufactures of refined oil, perfumed and all other types of oil and extracting by-products thereof.

6. The Registered Office of Reliance Industries Limited, the transferee Company, is situated at 3rd Floor, Maker Chambers-IV, 222, Nariman Point, Mumbai 400 021. The main objects of RIL are as specified in para 8 of the petition.

7. RPL is a Reliance group Company and has been promoted by RIL, which directly, and through its subsidiary (Reliance Industrial Investments Holding Limited) and associate companies, controls nearly 64% share holding in RPL. RIL in terms of net worth, assets and net profits ranks ahead of RPL, which otherwise is

India's largest private sector company in terms of sales.

8. The petition has given the background to the amalgamation, rationale for the amalgamation and the consequences of the amalgamation. The Board of Directors of RPL and RIL have considered the following amongst various factors while deciding to adopt and approve the scheme.

(A) Size, Scale, Integration and Financial Strength;
(B) Global Competitiveness;
(C) Market Leadership;
(D) Industry Consolidation;
(E) Strategic Fit and Site Integration;
(F) Synergies;
(G) Enhanced Organizational Capabilities;
(H) Complementary Management Strategies; and
(I) Other factors.

9. The Scheme of Amalgamation was placed before the Board of Directors of both RPL and RIL on 03.03.2002, at which meeting, the report of S.B.Billimoria & Co. and Price Waterhouse, Chartered Accountants, which jointly recommended the share exchange ratio for the issue of shares by RIL to the shareholders of RPL upon the coming into effect of the Scheme, was accepted and the Scheme was approved by both the Boards. The appointed date for the Scheme has been fixed at 01.04.2001. For the present, it is not necessary to enter into any detailed narration of the various terms of the Scheme.

10. On 16.04.2002, this Court admitted the petition and directed that the notice of hearing be advertised. Accordingly, the notice of hearing of this petition has been advertised in "The Times of India" (all editions) and in "Gujarat Samachar" (all editions) on 20.04.2002, as stated in the affidavit of Mr.Anil C. Dave. The petitioner - Company also sent individual notices to the equity shareholders regarding the hearing of the petition. Similarly, the notice of hearing was also served on the Central Government, Regional Director, Department of Company Affairs, as required under Section 394-A of the Companies Act, 1956 (hereinafter referred to as the "Act") and also on the Official Liquidator attached to this Court under the second proviso to Section 394(1) of the Act.

11. In response to the aforesaid notices, objections have been received from the following persons:-

(i) Shri S.D.Basu, Objection dated

11.04.2002.

(ii) Shri Kashinath Sahu, Objection dated 15.04.2002.

(iii) Smt.Vanita Ravindra Dandekar, Objection dated 02.05.2002.

(iv) Shri Rajesh C. Shah, Objection dated 15.06.2002.

(v) Shri Bhupendra Popatlal Shah, Objection dated 24.06.2002.

All the objections were sent to the petitioner Company through its solicitors.

12. The Court has gone through the individual objections raised by the different objectors. Most of the objections are challenging, primarily, the share exchange ratio. Various other objections raise common issues and it is not necessary to deal with them individually for the reasons that follow.

13. Before dealing with the principal objection regarding the report submitted by S.B.Billimoria & Co. and Price Waterhouse, Chartered Accountants, it is necessary to dispose off the different objections raised on behalf of the respective objectors.

14. The first contention was that RIL, the transferee Company, is not before this Court and only RPL, the transferor Company, is before this Court. Therefore, an order which may be passed by this Court may result in conflicting decisions and this Court may not be in position to enforce the decision and directions against RPL and as such the Scheme of proposed amalgamation which has been approved may not be possibly implemented. The transferee Company has its Registered Office in the State of Maharashtra and as required in law, has rightly petitioned the High Court of Mumbai. The objection as to possible difficulty in implementation of the decision is not a relevant factor while deciding the Scheme of Amalgamation.

15. That Securities and Exchange Board of India (SEBI) should be joined as a necessary party to the present petition. Nothing has been pointed out under any provisions of statutory law as to what is the requirement, if there is any requirement to join SEBI as a necessary party or proper party so far as Scheme of

Amalgamation is concerned. The scheme has to be approved, with or without modification, or disapproved in consonance with the jurisdiction that the Court is required to exercise in accordance with the provision of the Act. The presence of SEBI is not necessary for this purpose.

16. The next objection relates to holding of annual general meeting and passing of resolution by postal ballot. This objection has been specifically dealt with by referring to various rules by the High Court of Bombay in its judgement dated 07.06.2002 rendered in Company Petition No.391 of 2002 connected with Company Application No.133 of 2002, wherein RIL was the petitioner - Company. This Court is in respectful agreement with the views expressed by the High Court of Bombay and it is not necessary to reiterate the same.

17. One more objection is to the effect that the Court should refuse to grant its approval to the Scheme on the ground of public interest as the amalgamation will result in creation of monopoly in relation to the production and marketing of goods. Nothing has been shown under any Act, Rule or Regulation or any other law under which the Company Court cannot exercise jurisdiction to sanction a Scheme in the event of a possibility or likelihood of monopoly resulting on the Scheme being sanctioned. The Apex Court has stated time and again that it is for the shareholders to decide what is in the best interest of the Company and if the shareholders have arrived at such a decision by applying approach of a prudent businessmen, it is not for the Court to sit in judgment. Furthermore, nothing has been brought on record to show that even if a monopoly results, it would affect the public interest or the economic interest of the country adversely, which may be a factor having relevant bearing.

18. Mr.Soparkar, the learned senior counsel appearing on behalf of the objector, Shri Rajesh C. Shah, invited attention of the Court to the three affidavits filed by the objector viz. first one dated 15.06.2002, second one dated 24.06.2002 and the third one dated 16.07.2002. It was submitted that the applicant - objector was holding 2400 shares jointly with family members, and he is a practicing Chartered Accountant since last 25 years. That the share exchange ratio of 11 shares of RPL for 1 share of RIL under the proposed Scheme was with an ulterior motive and for personal benefit of the promoters and would result into unjust enrichment at the cost of small investors / shareholders of RPL. That there was no

adequate and meaningful disclosure in the notice calling the meeting so as to enable the shareholders to arrive at any informed decision. The share exchange ratio was unfair, unjust, not equitable, not prudent and not commercial and for this purpose reliance was placed on the figure of net worth of RPL as well as the purchase price of shares of IPCL which was acquired by RIL. It was further contended that the market price of the share did not reflect true and correct worth of the Company, and hence, the exchange ratio was not correctly arrived at. The valuation report dated 03.03.2002, prepared by S.B.Billimoria & Co. and Price Waterhouse, Chartered Accountants, was assailed as being extremely vague, ambiguous, non-committal and without any details. In support of this proposition various portions of the covering letter of the report were read out by the learned counsel. It was further stated that the valuation report refers to three valuation methods viz. (i) net assets value, (ii) earnings value, and (iii) the market value, but no data relied upon for the purpose of applying any of the three methods had been provided. Thereafter, various methods were individually dealt with by pointing out various difficulties and deficiencies, which in the opinion of the objector, rendered the valuation report as being one which could not be relied upon and could not be regarded as a valuation report at all. On behalf of the objector various details obtained from different sources like, the Chairman's report, various media release, stock exchange quotations etc. were pressed into service to show why the valuation report fixing the share exchange ratio should not be accepted. A report of one Shri Nrupesh C. Shah, Chartered Accountant, has also been annexed with the affidavit dated 24.06.2002, wherein a different share exchange ratio has been worked out so as to point out that the valuers have not taken into account various factors which would have otherwise resulted in the exchange ratio being different from the one which has been suggested in the report dated 03.03.2002.

19. It was submitted that an order made by this Court under Section 391 of the Act would bind the dissenting minority and for this purpose the Court has to ensure that the exchange ratio is fair, just, reasonable and equitable; that though the Court may not scrutinize the valuation report like an Appellate Court yet a limited scrutiny must be undertaken and the Court must not act as a rubber stamp while accepting the present report. The report is merely an expression of opinion without any supporting basis; that it was always open to the Court to discard a report on the ground that the same was not a

reliable or if the Court found that factors which have gone into preparation of the report are not relevant, but in the present case on a bare reading of the report, it was not possible for the Court to state even thus. That if the Court came to a conclusion that the valuation report did not reflect a fair share exchange ratio or that while adopting and applying the methodology mistake had been committed, an opportunity should be granted by calling for a fresh report from a third valuer. Reliance was placed on the following decisions in support of various objections :

(i) Mafatlal Industries Ltd., In re. [1995] 84 Company Cases 230 (Gujarat);

(ii) Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., [1996] 87 Company Cases 792 (SC);

(iii) Tata Oil Mills Co. Ltd., In re And Hindustan Lever Ltd., In re; (1994) 3 Comp LJ 46 (Bombay);

(iv) Marshall Sons & Co. (India) Ltd. Vs. Income-Tax Officer, [1997] 223 ITR 809.

20. As against this, Mr.Bhatt, the learned senior counsel appearing on behalf of the petitioner, submitted that the valuation report had been prepared jointly by two firms of Chartered Accountants who were independent, had no connection with either RPL or RIL and even the objectors had not made any allegations to this effect. That none of the objectors had attended the meeting which was summoned as directed by this Court. That the valuation report had not been inspected by any of the objectors. Referring to the request of obtaining a fresh valuation report, it was submitted on behalf of the petitioner Company that even if the request of the objectors was accepted and various details were furnished in support of the valuation report, yet, ultimately, the Court will have to rely upon one or the other valuation report and in the very nature of things it was not possible for the Court to exercise jurisdiction to discard report after report, because a fresh report would bring in fresh objections. That the Court was required to go by the decision of the majority of the shareholders, who had attended the meeting either in person or by proxy. The reasons for merger which have been set out in the petition were referred to and relied upon in detail. In support of various submissions, the following decisions were relied upon.

(i) Hindustan Lever Employees' Union Vs. Hindustan

Lever Limited & Ors., [1994] 4 Comp LJ 267 (SC);

(ii) Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., [1996] 87 Company Cases 792 (SC); and

(iii) Kiritbhai Hiralal Patel Vs. Arvind Intex Ltd., [2000] 28 SEBI & Corporate Laws - Reports 130 (Guj.).

21. It was further submitted that various parameters as to how the Court should approach in such matters had been laid down and reiterated by the Supreme Court in the aforesaid decisions and the Court was expected to withhold its sanction, if the Court found that it was an unconscionable or an illegal Scheme or was otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. That the Court had no jurisdiction like an appellate authority to minutely scrutinise the Scheme and to arrive at an independent conclusion i.e. independent of the decision of the majority of the shareholders who had approved the Scheme.

22. The position in law is well settled that while exercising the jurisdiction and power to sanction a Scheme, the Court is required to ensure that statutory provisions have been complied with, that the class of persons who attended the meeting was fairly represented and that the statutory majority was acting bona fide and lastly that the arrangement i.e. Scheme was such which an intelligent and honest man, acting in respect of his interest, might reasonably approve. The Court, at the same time, is not required to differ from the decision of the majority arrived at the meeting unless any of the factor was found to be wanting. A share exchange valuation will have to be approved unless it shocks the conscience of the Court.

23. The broad contours of jurisdiction have been succinctly summarized and enumerated in the decision of Miheer H. Mafatlal Vs. Mafatlal Indus. Ltd. (S.C.) (supra) and it is not necessary for this Court to reiterate the same. In the same decision it has been stated that :

". . . . . It has also to be kept in view that which exchange ratio is better is in the realm of commercial decision of well informed equity shareholders. It is not for the Court to sit in appeal over this value judgment of equity shareholders who are supposed to be men of the world and reasonable persons who know their own

benefit and interest underlying any proposed scheme. With open eyes they have okayed this ratio and the entire scheme. . . . . "

24. Valuation, in a sense, is an estimate and a discretion. The actual value assigned to a property is essentially a matter of informed opinion. It is generally a matter of estimate based to some extent on guesswork and despite the utmost bona fides, the estimate of the fair market value is bound to vary from individual to individual. 'Value' is a word of many meanings. Basic meaning is how much something is worth. The expression value has different significance for a lawyer, a finance manager or an accountant. Value, as a word and a concept, has different hues and colours e.g. legal, taxation, finance etc. The concept of value predominantly is used for the purpose of ascertainment of "price" or "value". As to whether addition of words 'market', 'fair', or 'real' adds or detracts from the price or the value would differ depending upon the context and the purpose of the valuation. A fair value assumes that some values may be unfair. The concept of market value means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing conditions, with all its advantages and the potential possibility. This, of course, also takes within its sweep any artificial restriction on the transferability of the property, the number of buyers given an opportunity to buy the property.

25. If the aforesaid principles, which are fundamental in nature, are borne in mind and taking into consideration the parameters laid down by the Supreme Court while exercising jurisdiction for the purpose of sanctioning a Scheme of Amalgamation, it is not possible to accept the stand of the objectors. It is pertinent to note that none of the objectors had attended the meeting. It is nobody's case that an attempt was made to attend the meeting but for reasons beyond the person's control, he or she could not attend the meeting.

26. On 11.03.2002, the Court had ordered in Company Application No.76 of 2002 that a meeting of the equity shareholders of RPL shall be convened and held on 15.04.2002 at 10:15 a.m. at the Registered Office to approve the scheme. Accordingly, as reported by the Chairman in his report dated 15.04.2002, the meeting had been held after notices dated 12.03.2002 was individually served on the individual shareholders as well as after advertising the holding of meeting in "The Times of

India" (all editions) and in "Gujarat Samachar" (all editions) on 19.04.2002. It is reported that 5925 (Five Thousand Nine Hundred and Twenty Five) shareholders attended either personally or by proxy and such number of equity shareholders were holding 397,76,12,296 (Three Hundred Ninety Seven Crores, Seventy Six lacs, Twelve Thousand, Two Hundred Ninety Six) equity shares of the value of Rs.3977,61,22,960/= (Rupees Three thousand nine hundred seventy Seven Crores sixty one lakh twenty two thousand nine hundred and sixty only). After the scheme of amalgamation was taken as read with the permission of meeting, the Chairman read out the salient provisions of the Scheme and after inviting debate thereon, a question was submitted in the form of resolution. Thereafter, the resolution on the proposed Scheme was put to vote. It is reported that 5775 (Five thousand Seven Hundred and Fifty Five) equity shareholders of the petitioner - Company holding 397,75,44,231 (Three Hundred Ninety Seven Crores, Seventy Five Lacs Forty Four Thousand Two Hundred and Thirty One) Equity Shares representing 97.47% in number of Equity Shareholders and 99.99% in the value of the Equity Shares present and voting, voted in favour of the Scheme. 150 (One Hundred and Fifty) Equity Shareholders holding 68,065 (Sixty Eight Thousand and Sixty Five) Equity Shares representing 2.53% in number of Equity Shareholders and 0.01% of the value of the Equity Shares, present and voting, voted against the Scheme. 4,30,667 (Four Lacs Thirty Thousand Six Hundred and Sixty Seven) votes represented by 828 (Eight Hundred and Twenty Eight) shareholders were declared as invalid.

Accordingly, 97.47% of the total number of members present and voting, voted in favour of the resolution and this was 99.99% in value of the equity shares polled in favour of the resolution. 2.53% of the total number of members present and voting, voted against the resolution and 0.01% of the value of equity shares polled voted against the resolution.

27. Thus, by an overwhelming majority, those present have voted in favour of the resolution i.e. in favour of approving the Scheme as per share exchange ratio proposed on the basis of the valuation report dated 03.03.2002. In these circumstances, it is not open to the Court to hold that there was any impropriety in the valuation of the shares. In fact, the valuation report has stated that it has based its conclusion of value on the figures of assets and labilities of both RPL and RIL reflected in the Balance Sheet as on 31.03.2001 along with the audited financial statement for the year ended on 31.03.1999 and 31.03.2000. The valuation report has also taken into

consideration extracts of unaudited financial statements for the 9 months period ended on 31.12.2001. This is over and above the discussions with the management of both RPL and RIL, other informations, explanations and representations as were required and provided by the respective managements along with such other analysis, reviews and inquiries as were found necessary. The valuation report further states that the valuers have not made any independent investigation and assume no responsibilities for the various informations, details, explanations and representations placed before the valuers. It was vehemently urged during the course of hearing that this sort of disclaimer would virtually amount to the valuers denying any responsibility as regards the validity or genuineness of the share exchange ratio. It is necessary to note that the figure of exchange ratio arrived at by the valuers could not be shown to be vitiated by fraud and/or mala fide. It is settled legal position that merely because the determination is done by a slightly different method which might result in a different conclusion would not justify interference unless it was found to be unfair. There is nothing on record to hold that the exchange ratio, brought on record by the aforesaid valuation report, is in any manner unjust or unfair. At the cost of repetition, it requires to be stated that it is the commercial wisdom of the parties to the Scheme who have taken an informed decision about the usefulness and propriety of the Scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority.

28. On behalf of the objectors reliance was placed on the fact of valuation report of Mr.Nrupesh C. Shah tendered with objection affidavit dated 24.06.2002 for contending that in earlier decisions of the Supreme Court and this Court the valuations had been accepted by observing "the appellants must come forward with concrete facts and valuation with regard to the assets of the transferor companies and the transferee company but the appellants have not come forward with any independent valuer's report and they have also not suggested any other ratio." Kiritbhai Hiralal Patel (supra); and hence, the valuation report in the present case be discarded and sanction to the Scheme be withheld. In the same decision the Court has further stated thus :

"..... In the book 'Study on share valuation',

which has been published by the Institute of Chartered Accountants of India, and on which reliance has been placed by the learned advocate for the appellants, the following observation has been made in its Foreward to the First Edition :

"The subject of valuation of shares has always been controversial in the accounting profession.No two accountants have ever agreed in the past or will ever agree in the future on the valuation of shares of a company, as inevitably they involve the use of personal judgment on which professional men will necessarily differ...."

Thus, even an expert body of accountants is emphatically expressing an opinion that no two valuers would ever agree to a method of valuing shares....."

Not only this, the Court has nowhere laid down that the moment a different valuation is placed on record the Court must discard the previous one. The fundamental parameters remain the same and unless it is shown that the exchange ratio and the Scheme are unconscionable or illegal or unfair or unjust the Court would not act as a Court of appeal and sit in judgment. In these circumstances, various objections raised on behalf of different objectors are not such as would require this Court to withhold sanction to the Scheme.

29. The objections raised on behalf of the Regional Director have been placed on record by Mr.P.J.Davawala, Additional Central Government Standing Counsel by way of letter dated 08.05.2002. Item A of the said letter refers to a writ petition pending before the High Court of Delhi. As can be seen, the subject matter of the said writ petition cannot form part of consideration in so far as the sanction or otherwise of the scheme is concerned. In relation to Item B inspection under Section 209-A of the Act, Books of Accounts and other records of both the transferor Company and transferee Company has been ordered by the Central Government under sub-section (6) of Section 209-A of the Act. Upon inspection of such Books and Records, the person making the inspection is required to report to the Central Government and in case of a default, sub-sections (8) & (9) of the said section provide for punishment, but the same are in relation to the Company or its officers and cannot stand in way of this Court while granting approval to the Scheme, if

other factors stand satisfied.

30. The Official Liquidator has placed on record his report dated 03.05.2002 and it is stated therein that the auditors appointed for the purpose of scrutiny and investigation of the Books of Accounts and affairs of RPL have submitted their report. It is stated in the report that the auditors are of the opinion that the acts and transactions of the Company i.e. RPL were conducted within the objects mentioned in the Memorandum of Association of the Company and that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or the public.

31. In view of what is stated hereinbefore the Scheme of Amalgamation as proposed by the petitioner - Company at Annexure-E to the petition is hereby sanctioned subject to the clarification that this sanction shall not affect any proceedings that may be pending or that may be commenced against the petitioner - Company in relation to any of its liabilities arising from past activities.

32. The petition is disposed off accordingly.

33. The cost of this petition to the extent of Rs.3,500/- be paid to Mrs.P.J.Davawala, Additional Standing Counsel for the Central Government.

At this stage, the learned senior advocate Mr.Soparkar appearing on behalf of one of the objectors submits that the judgement may be stayed for a period of four weeks. Mr.M.J.Thakore, learned senior advocate appearing on behalf of the petitioner - Company objects to the prayer made on behalf of the objector.

Having heard both the sides no good reason exists for staying the operation of the judgement. The request made on behalf of the objector is accordingly rejected.

[D.A.MEHTA, J]

'Bhavesh'